

ARKANSAS SUPREME COURT

No. 08-78

CARL PRINCE/QADOSH
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered January 15, 2009

PRO SE PETITION FOR REHEARING
AND PETITION FOR WRIT OF
MANDAMUS [CIRCUIT COURT OF
JEFFERSON COUNTY, CV 2006-656]

PETITION FOR REHEARING DENIED;
PETITION FOR MANDAMUS MOOT.

PER CURIAM

Appellant Carl Prince/Qadosh, who is an inmate incarcerated in the Arkansas Department of Correction, filed in Jefferson County Circuit Court a petition for writ of habeas corpus that was dismissed. Appellant lodged an appeal of that order in this court and we dismissed the appeal on the basis that appellant is no longer incarcerated in Jefferson County and that circuit court cannot effect the relief requested. *Prince/Qadosh v. Norris*, 08-78 (Ark. Oct. 23, 2008) (per curiam). Appellant filed a petition for rehearing on the dismissal of the appeal and a petition for writ of mandamus in which he seeks to compel the appellee to return appellant to Jefferson County.

In his petition for rehearing, appellant contends we erred in dismissing his appeal based upon the Department of Correction's transfer of appellant to another county. He argues that to do so would be unfair, that the decision violates the Arkansas Constitution's prohibition of suspension of the writ of habeas corpus in Article 2, § 11, that the holding is in conflict with this court's constitutional power to issue the writ, and that Arkansas Code Annotated § 16-112-106(c) (Repl.

2006) may conceivably apply to the situation. Appellant requests a writ of mandamus in conjunction with his claims in the petition for rehearing.

We note that appellant does not assert any facts that would support his allegations (1) that he was transferred by the Department of Correction with the intent to circumvent his pursuit of the writ, and (2) that the transfer took place only after appellant's petition had been considered in the circuit court and the appeal of the circuit court's order had been lodged in this court. We do not, however, reach the merits of appellant's claims in his petition for rehearing because a cursory review of the petition filed in circuit court provides an additional basis for dismissal of the appeal.

In his petition for writ of habeas corpus, appellant based his grounds for the writ upon his self-representation at trial. He argued that he had not effectively waived his right to counsel, asserting that the trial court lost jurisdiction as a result of that error and that the judgment was defective on its face because it does not indicate appellant was represented by counsel.

The burden is on the petitioner in a habeas corpus petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798-799. Appellant failed to make the requisite showing because he failed to plead cognizable grounds for the writ.

An accused is entitled to represent himself provided that he knowingly and intelligently forgoes his right to counsel and is able and willing to abide by the rules of procedure and courtroom protocol. *Jarrett v. State*, 371 Ark. 100, 263 S.W.3d 538 (2007). The judgment was not invalid on

its face because it indicated that appellant acted as his own attorney; an appellant may have the right to represent himself. Appellant's claim that his waiver was not valid could have been raised on direct appeal. *See Rowbottom v. State*, 341 Ark. 33, 13 S.W.3d 904 (2000); *Oliver v. State*, 323 Ark. 743, 918 S.W.2d 690 (1996). A habeas corpus proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for postconviction relief. *Friend v. Norris*, 364 Ark. 315, 219 S.W.3d 123 (2005) (per curiam). A due process violation as claimed by appellant is the type of factual issue that should have been addressed through a direct appeal. *See id.* In fact, this court has previously affirmed the denial of habeas relief to appellant on the basis that a similar petition with like arguments had no merit. *Prince v. State*, 01-894 (Ark. Feb. 21, 2002) (per curiam).

As noted in our previous opinion on this appeal, an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of habeas corpus, will not be permitted to go forward where it is clear that the appellant could not prevail. *Lukach v. State*, 369 Ark. 475, 255 S.W.3d 832 (2007) (per curiam). Because appellant's petition for writ of habeas corpus did not state a claim cognizable in a habeas proceeding, our dismissal of the appeal was not in error, regardless of appellant's challenges to our previous holding, and we deny the petition for rehearing. The petition for writ of mandamus is therefore moot.

Petition for rehearing denied; petition for writ of mandamus moot.